

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Bo Anderson Taylor, #316071,)	
)	
Plaintiff,)	C.A. No. 8:08-2072-HMH-BHH
)	
)	
vs.)	OPINION & ORDER
)	
Kelvin Myers "SGT.," Stan Burt)	
"Warden," Jones "SGT.," and)	
Simmons C/O,)	
)	
Defendants.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Bruce Howe Hendricks, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Bo Anderson Taylor ("Taylor"), a pro se state prisoner, filed suit pursuant to 42 U.S.C. § 1983, alleging various violations of his civil rights. In her Report and Recommendation, Magistrate Judge Hendricks recommended granting Defendants' motion for summary judgment and dismissing the case without prejudice because Taylor failed to exhaust his administrative remedies.

In Defendants' motion for summary judgment, they offered procedural and substantive grounds in support of their motion. The Report and Recommendation does not address Defendants' argument that Taylor's claims fail on the merits. On April 23, 2009, Defendants

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

objected to the Report and Recommendation because it failed to address the arguments that Taylor's claims fail on the merits.² Defendants submit that they are entitled to summary judgment on the merits of Taylor's claims, and thus, the case should be dismissed with prejudice. Based on the foregoing, the court declines to adopt the Report and Recommendation and remands this matter to the magistrate judge for consideration of all of Defendants' arguments in support of summary judgment.

It is therefore

ORDERED that the case is remanded to the magistrate judge for further proceedings.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
April 29, 2009

² To date, Taylor has not filed objections to the Report and Recommendation. However, the time for filing objections has not yet expired, and Taylor will suffer no prejudice from a remand of this case for further consideration.